IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 25 OF 2004.

Shri Babu Shaik,
Central Jail, Aguada.
Goa. ... Petitioner.

VERSUS

State of Goa,
Represented by I.G. of
Prisons. ... Respondent.

Shri S. Karpe, Advocate for the Petitioner under Legal Aid Scheme.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N.A. BRITTO, J.

DATE: 25TH JUNE, 2004.

ORAL JUDGMENT:

The petitioner-prisoner, has invoked the jurisdiction of this Court under Article 227 of the Constitution of India against the Order dated 19.11.2003 of the learned Inspector General of Prisons rejecting his application for parole of 45 days.

2. Admittedly, the said prisoner is undergoing a sentence of ten years R.I. from 11.3.97 in a case involving an offence punishable under Sections 376 and 395 of I.P.C., as informed by the learned Advocate Shri Karpe. The learned I.G.P. has

rejected the application of the prisoner by taking into consideration the report of the Police Inspector dated 26.9.2003. In fact, the learned I.G.P. has stated in his Order dated 19.11.2003 that the ground on which parole was sought is not genuine and of emergent nature.

3. Section 19 of the Prisons (Goa, Daman and Diu Furlough and Parole) Rules, 1968 stipulates as to when a prisoner may be released on parole. It provides that a prisoner may be released on parole for such period as the Competent Authority referred to in Rule 18 in its discretion may order, in cases of serious illness, or death of any member of the prisoner's family or of his nearest relatives or for any other sufficient cause. Rule 22 deals with the procedure to be followed when applications for parole are received and sub-rule (2) of Rule 22 provides that the Inspector General of Police shall immeditely make enquiries to ascertain whether the ground or grounds on which parole is applied for is or are genuine and submit immediately his report to the Competent Authority mentioning inter alia whether it recommends the grant of parole and also whether there is a likelihood of breach of peace if the prisoner is released on parole.

4. Admittedly,the prisoner had sought for parole of 45 days to visit his mother and father at Hyderabad who are presently sick and that the same may also help to settle his case which is pending before the Magistrate at Nampally, Hyderabad for the last of couple of years. However, it appears that no inquiries have at all been made whether the ground of sickness of the parents of the prisoner is genuine or not. On this ground alone the order of the learned I.G.P. dated 19.11.2003 deserves to be set aside as it proceeds on non-application of mind to the grounds urged by the prisoner in his application for parole.

5. Consequently I hereby set aside the Order dated 19.11.2003 and direct the learned I.G.P. to consider the said application on the grounds given by the prisoner, afresh within a period of 60 days.

Duly authenticated copy of this Order be issued to the Public Prosecutor.

N.A. BRITTO, J.

sl.